
DPIPWE SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY INTO REGULATION OF AUSTRALIAN MARINE FISHERIES AND AQUACULTURE SECTORS

Marine Fisheries

Contemporary fisheries regulation is a complex range of regulation and policy arrangements to provide for the ecologically sustainable development of fishing and aquaculture. For fishing, there are often a range of access arrangements and access rights in place that may be traded in the market place. These access rights are strongly guarded by the commercial sector. For most jurisdictions (except the Commonwealth), complex interactions also apply to the recreational sector - often with some tension regarding the relative access rights of the various sectors.

The arrangements in place for each fishery often have a long and complex history including management planning processes (including the introduction of legislation), allocation of commercial rights, and potentially a range of other management measures. Thus, each fishery (and jurisdiction) has its own unique aspects that must be considered in any potential proposals for future changes – there is no “blank whiteboard” in place for most fisheries.

Caution must be exercised considering that a “one size fits all” range of high level proposals can be developed for all fisheries across Australian jurisdictions.

The supporting issues paper states:

“While Australia's fisheries are regarded as sustainable, reliable and safe, there is scope to improve the management of fisheries through effective and coordinated regulatory and management arrangements. This includes the streamlining of regulations, rationalising jurisdictional and offshore constitutional settlement arrangements through improved cross jurisdiction and multi-jurisdictional regulatory regimes, information and service sharing, and harmonisation of environmental, management and compliance arrangements”.

The need for streamlining and increased cross jurisdictional arrangements etc. is stated as a self-evident truth - this is not, however, necessarily considered to be the case. Again the details and context of each situation needs to be fully understood, considered and assessed. Such statements need to be assessed with rigour in terms of what may be realistically provided and achieved in each case against cost, practicality and outcome delivery. Increased harmonisation for example, is not an outcome in itself - it must deliver outcomes.

There are already processes and mechanisms available for different parties to identify opportunities or areas where cooperation or shared jurisdictional processes can be pursued. In these cases, such opportunities are appropriately pursued at a bilateral level with each party jointly working to achieve the outcomes identified. This situation should remain the case.

Suggestions that changes to management arrangements, that may appear superficially relatively simple, can deliver unrealistic outcomes or suggestions that outcomes will be delivered that do not eventuate, will only lead to further scepticism regarding management processes. There is a risk that unrealistic expectations may arise for the delivery of certain outcomes that do not eventuate.

Projects working towards cross jurisdictional arrangements seeking savings also need to be rigorously assessed. Generally, processes and negotiations etc. involving multiple jurisdictions are resource intensive and do not provide quick outcomes. Indeed cross jurisdictional processes can lead to additional levels of bureaucracy that is counterproductive to aims of efficiency.

Any focus on harmonisation and savings purportedly through cross jurisdictional arrangements need to be considered on a case by case basis.

In 2015, a sub-committee of the Australian Fisheries Management Forum set up a committee of senior managers to identify and assess potential opportunities for cooperation across jurisdictions with the objective of savings. The basic finding was that where opportunities are identified they should be pursued by the parties involved but should not be driven by high level overarching objectives. There were no major deficiencies in this area identified, rather, some opportunities already being pursued by some jurisdictions were emphasised. For example, opportunities for potential saving for vessel monitoring systems by service delivery agreements between parties, or delivery of certain research projects, e.g. fishery assessments, by service agreement.

The objective of harmonisation of consistent management arrangement is questioned. Different regimes can and do operate between jurisdictions which should ideally be complementary in terms of management outcomes at a whole of stock level. However, arrangements do not need to be consistent to be complementary. Each jurisdiction may seek similar outcomes with very different arrangements applicable to the situation in each jurisdiction.

Tasmania has entered into several offshore constitutional settlement (OCS) arrangements for jurisdiction over several key species. Fundamentally, these arrangements work very well in some cases and are more complex in certain fisheries, due to the complexities of the distribution of target species and adjacent jurisdictions' fisheries. These arrangements are a central and important part of the management arrangements now in place.

Any review of current OCS, or consideration of further arrangements, can be undertaken within existing process, although there are no Tasmanian issues being progressed at this time and no work programs towards any such activity. Impetus for exploring any revised/new arrangements should be for a need identified by two parties and pursued as such. Again, OCS arrangements can be a means to an outcome but do not resolve hard and/or complex management issues in themselves.

Tasmania has passed commercial jurisdiction for several highly mobile or shared species such as tuna and school/gummy shark. It is considered that this has allowed appropriate stock wide management for these wide ranging species. A quota system for school shark across the jurisdictions was possibly the most effective mechanism for addressing urgent stock issues for that species.

Conversely, management by Tasmania under OCS of the abalone and rock lobster fisheries adjacent to Tasmania has facilitated a strong and effective management regime for those fisheries around Tasmania. For rock lobster, Tasmania, Victoria and South Australia work cooperatively to maximise issues of joint interests such as research and assessment and possible management objectives. However, the management of the relevant species remains under the State's legislative responsibilities. This prerogative is highly valued in Tasmania and would be highly unlikely to be reconsidered.

For abalone, with very localised reproduction, the OCS allows management of the fishery with virtually no straddling stock or sharing issues.

These OCS's with a single species and gear type provide simple examples where OCS is very effective. However, for multi species/multi gear type fisheries with adjacent jurisdiction fisheries sharing stocks, issues may be more complex, and OCS arrangements may not be a panacea to solve all issues.

The existence of multiple jurisdictions is an established fact of Australia's system of governance and this cannot be escaped. Each jurisdiction will have imperatives and policies in place that each will pursue for the betterment of that jurisdiction (within ESD objectives). OCS arrangements cannot be expected to somehow overcome the Federation of our Government. Nor would

jurisdictions potentially agree to pursue such arrangements and ultimately the Parliament of each State/Territory will determine the management arrangements in place.

Each jurisdiction must pursue management processes often within tight and ever increasing resource constraints. Expectations for outcomes and change must be within those resources and capacity for delivery.

For Tasmania no explicit cost recovery process is in place for fisheries management. However, fees are levied from each fishery for which different portions are retained for management processes. Funds from Consolidated Revenue have declined over a prolonged period and services delivered more and more within the fees levied. For abalone a resource rent is in place. Most jurisdictions also have responsibility for important recreational fisheries which must be supported. Fees are also collected from recreational fishers to support management planning processes.

There are a range of services and responsibilities for jurisdictions where the “public good” may be a significant factor. Quantifying the public good and corresponding support with appropriate monies is a challenge.

In Tasmania, the Department of Primary Industries, Parks, Water and Environment does not administer the enforcement or research that supports fisheries processes.

Tasmanian Police provides the bulk of the enforcement capacity for fisheries under Tasmanian jurisdiction. Whilst communication and consultation is ongoing, Tasmania Police is funded separately and will run its force in line with its processes and budgets.

Core research including the annual fishery assessment process is provided by the University of Tasmania through a collaboration agreement with the State Government through the Institute for Marine and Antarctic Studies (IMAS). A formal agreement with governance processes is signed by both parties for this service. A process of identifying research priorities and their prioritisation is in place, however, research outputs are limited by the funds available and the capacity for leveraging or obtaining grants etc. for specific projects.

The research, enforcement and management processes must be delivered within the funds available and must be directed to clear and high priorities. This may see limited capacity for pursuing any other agenda items or reform.

Statutory fisheries management processes in Tasmania fall under the provisions of the *Living Marine Resources Management Act 1995* (the Act). The Act stipulates the objectives that must be pursued and provides the head power for specified actions and processes that must be followed for the introduction and/or review of subordinate legislation including management plans.

The Act explicitly prescribes the processes for making and reviewing such subordinate legislation/management plans that form the heart of the management framework in Tasmania. This includes the consultation processes with recognised fishing bodies and the general community. All such legislation ultimately faces the scrutiny of the Tasmanian Parliament (both Upper House and Lower House).

These processes were explicitly designed to allow formal comment and input from all stakeholders and the general public - with Parliament as the final arbiter. Inevitably, often these processes are described as overly complex and slow and an unnecessary burden of “red tape”. Conversely, other groups may argue there is not enough opportunity for input into these processes and additional process should be implemented.

There is an internal tension between objectives of streamlining and minimising process versus providing genuine and transparent opportunity for all to provide genuine input.

Indeed, it may be argued that if process does not allow opportunity for general input and only provides for narrow sectoral input, then issues such as long-term social licence may become more problematic. There needs to be explicit safeguards and public scrutiny for the exploitation of a community resource. As such, "process" is a critical part of the management planning outcomes to provide genuine input from all.

Conversely, in any process some individuals inevitably argue consultation was inadequate (often if a measure is not supported). However there is a balance required in that issues must be progressed and process does not become overburdened to the point of paralysis.

Non-regulatory programs are successfully utilised predominantly in the recreational fishing area. Education and communication is utilised to promote and foster a responsible fishing ethic to supplement the legislative measures in place. However, fish are potentially a high value product (particularly for say abalone and rock lobster) and a regulatory regime supported by enforcement activities is ultimately required to address illegal activity. Experience shows that there are always individuals and operators who will avail themselves of an illegal activity if they consider there is little likelihood of being caught and/or inadequate penalties.

Fishery stock assessment reports compiled regularly by IMAS for key fisheries form a key part of the management process. Generally, each major area will have a program directed towards it that encompasses the gamut of research being progressed to support that fishery/area. The data and content of each assessment will depend upon the attributes of each fishery and the tools most effective for assessment of that fishery. There is a high reliance on the outputs of the research provided.

There will inevitably always be issues, questions and issues of uncertainty in relation to the management of each fishery. However, this does mean appropriate decisions cannot be made in the absence of all information. Indeed, many decisions need to be made recognising a level of uncertainty which requires a corresponding level of caution.

There can be range of areas or causes for uncertainty and variability in an assessment of which climate change may be just one (e.g. variability in recruitment - which climate change may also impact). The consideration of the impacts of such variables including climate change should not be considered "separate" from the gamut of issues facing a fishery. Rather this issue needs to be included in the ongoing decision processes and identification of research needs in a strategic manner.

The management planning process in Tasmania involves strong cooperation and engagement with the commercial and recreational sectors. Organisations can be recognised under the provisions of the Act as "fishing bodies". When so recognised, the body must be consulted when certain relevant actions and decisions are made under the Act. In practice, the Minister recognises each fishing body as providing the key input for that sector. A fishing body is recognised for each major fishery and also for the recreational sector.

Fishery advisory committees are also formed under the Act to provide the Minister with advice in relation to the management of a fishery. In practice, the fishery advisory committees are the key vehicle for assessing and progressing management issues and proposals. The fishing bodies are also provided membership upon the relevant advisory committee.

Thus, the different sectors have strong, clear and transparent input into management processes and decisions. However, these committees are not decision making bodies but advise the Minister on decisions that are ultimately made by the Minister. In practice, a coherent and organised fishing body can have a strong role in management together with transparent input working within the advisory committees.

Thus, there are strong processes in place in Tasmania for research, enforcement and management. However, activities in all these spheres must be targeted within resources available to absolute priority areas. These processes and the priority areas identified are the prerogative of the State.

A number of cross jurisdictional arrangements are in place and form an important part of the management regime. If new arrangements, or amendments to existing arrangements are required, Tasmania can pursue those avenues through processes and legislation already in place.

Any recommendations from the Commission must recognise the long history and differences of each fishery and jurisdiction and be cautious regarding any one size fits all recommendations. Generally, many issues are longstanding and there is no easy panacea for complex management arrangements.

Aquaculture

It is noted that the primary focus of the review is on regulation of wild capture marine fisheries.

The attached documentation provides a comprehensive overview of the finfish aquaculture industry and the regulatory framework underpinning this industry sector's continued sustainable growth and development in Tasmania.

This regulatory framework applies to all aquaculture industry sectors.

The recent findings of the Senate Standing Committee on Environment and Communications inquiry into regulation of the finfish aquaculture industry in Tasmania consider how effective these mechanisms are, particularly in relation to environmental impacts and are therefore of relevance to the Productivity Commission inquiry.

These documents clearly outline regulatory arrangements, historical developments in the industry and provide an overview of economic and social benefits to the State.

The documents attached are:

1. Tasmanian Government submission to the Senate Standing Committee on Environment and Communications - regulation of the finfish aquaculture industry in Tasmania;
2. Senate Standing Committee on Environment and Communications report on regulation of the finish aquaculture industry in Tasmania, 21 August 2015.